

**FILED**

**JUL 28 2008**

**Board of Vocational Nursing  
and Psychiatric Technicians**

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**BEFORE THE  
DEPARTMENT OF CONSUMER AFFAIRS  
BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2003-1502

KATHLEEN SCHWARTZ  
aka KATHLEEN MCCLANAHAN SCHWARTZ  
aka KATHLEEN MCBURNIE  
27915 N. Sarabande Lane, Apt. 413  
Canyon Country, CA 91387  
Vocational Nurse License No. VN 124610

**A C C U S A T I O N**

Respondent.

Complainant alleges:

**PARTIES**

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this  
Accusation solely in her official capacity as the Executive Officer of the Bureau of Vocational  
Nursing and Psychiatric Technicians, Department of Consumer Affairs (Bureau).

2. On or about November 19, 1984, the Bureau issued Vocational Nurse  
License No. VN 124610 to Kathleen Schwartz aka Kathleen McClanahan Schwartz aka Kathleen  
McBurnie (Respondent). The Vocational Nurse License expired on December 31, 2004.

**JURISDICTION**

3. This Accusation is brought before the Bureau, under the authority of the  
following laws. All Section references are to the Business and Professions Code unless

1 otherwise indicated.

2           4.     Section 118, subdivision (b), provides, in pertinent part, that the expiration  
3 of a license shall not deprive the Bureau jurisdiction to proceed with a disciplinary action during  
4 the period within which the license may be renewed, restored, reissued or reinstated. Under  
5 Section 2892.1, the Bureau may renew an expired license at any time within four years after the  
6 expiration.

7           5.     Section 490 provides, in pertinent part, that the Bureau may suspend or  
8 revoke a license when it finds that the licensee has been convicted of a crime substantially related  
9 to the qualifications, functions or duties of a licensed vocational nurse.

10          6.     Section 2875 provides, in pertinent part, that the Bureau may discipline the  
11 holder of a vocational nurse license for any reason provided in Article 3 (commencing with  
12 section 2875) of the Vocational Nursing Practice Act.

13          7.     Section 2878 states, in pertinent part:

14                 "The Board may suspend or revoke a license issued under this chapter [the  
15 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

16                 "(a) Unprofessional conduct, . . .

17                 . . . .

18                 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or  
19 abetting the violating of, or conspiring to violate any provision or term of this chapter.

20                 . . . .

21                 "(f) Conviction of a crime substantially related to the qualifications, functions,  
22 and duties of a licensed vocational nurse, in which event the record of the conviction shall be  
23 conclusive evidence of the conviction.

24                 . . . .

25                 "(j) The commission of any act involving dishonesty, when that action is related  
26 to the duties and functions of the licensee. . . ."

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1                   8.       Section 2878.5 states, in pertinent part:

2                   In addition to other acts constituting unprofessional conduct within the meaning  
3 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person  
4 licensed under this chapter to do any of the following:

5                   "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a  
6 licensed physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or  
7 administer to another, any controlled substance as defined in Division 10 of the Health and  
8 Safety Code, or any dangerous drug as defined in Section 4022.

9                   . . . .

10                  "(c) Be convicted of a criminal offense involving possession of any narcotic or  
11 dangerous drug, or the prescription, consumption, or self-administration of any of the substances  
12 described in subdivisions (a) and (b) of this section, in which event the record of the conviction is  
13 conclusive evidence thereof. . . ."

14                  9.       California Code of Regulations, title 16, section 2521, states:

15                  "For the purposes of denial, suspension, or revocation of a license pursuant to  
16 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or  
17 act shall be considered to be substantially related to the qualifications, functions or duties of a  
18 licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a  
19 licensed vocational nurse to perform the functions authorized by his license in a manner  
20 consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be  
21 limited to those involving the following:

22                  . . . .

23                  "(c) Violating or attempting to violate, directly or indirectly, or assisting in or  
24 abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2  
25 of the Business and Professions Code. . . ."

26                  10.       Section 125.3 provides, in pertinent part, that the Bureau may request the  
27 administrative law judge to direct a licentiate found to have committed a violation or violations  
28 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and



1 enforcement of the case.

2 CONTROLLED SUBSTANCE / DANGEROUS DRUG

3 11. Diazepam, generic for the brand name Valium 10 mg., a benzodiazepam  
4 derivative, is a Schedule IV controlled substance as designated by Health and Safety Code  
5 section 11057(d)(8) and is categorized as a dangerous drug pursuant to Section 4022.

6 FIRST CAUSE FOR DISCIPLINE

7 (Substantially Related Convictions)

8 12. Respondent is subject to disciplinary action under Sections 490 and 2878,  
9 subdivision (f), as defined in California Code of Regulations, title 16, section 2521, subdivision  
10 (c), in that Respondent was convicted of committing crimes substantially related to the  
11 qualifications, functions or duties of a licensed vocational nurse which to a substantial degree  
12 evidence her present or potential unfitness to perform the functions authorized by her license in a  
13 manner consistent with the public health, safety, or welfare. The circumstances of the  
14 convictions are as follows:

15 a. On or about January 5, 2006, in a criminal proceeding entitled *The People*  
16 *of the State of California v. Kathleen McClanahan Schwartz* in Los Angeles Superior Court,  
17 Santa Clarita Courthouse, Case No. 5NE03236, Respondent was convicted on a plea of *nolo*  
18 *contendere* for violating Health and Safety Code section 11375(b)(2) (possession of a designated  
19 controlled substance, to wit, diazepam), a misdemeanor.

20 b. The circumstances of the conviction are that on or about October 4, 2005,  
21 Los Angeles Sheriff's Department officers responded to a report of vandalism at a Travelodge  
22 Motel. During an interview with the officers, Respondent admitted to the vandalism and was  
23 found in possession of Valium (Diazepam), a controlled substance and dangerous drug, without a  
24 valid prescription.

25 c. On or about May 1, 2002, in a criminal proceeding entitled *The People of*  
26 *the State of California v. Kathleen Schwartz* in Los Angeles Superior Court, Santa Clarita  
27 Courthouse, Case No. 2NE01039, Respondent was convicted on a plea of *nolo contendere* for  
28 violating Penal Code section 470(d) (forgery), a misdemeanor.



1 d. The circumstances of the conviction are that on or about April 12, 2002,  
2 San Diego Sheriff's Department officers documented a crime/incident report from Respondent's  
3 sister-in-law, then forwarded it to the Los Angeles Sheriff's Department (LASD) for processing.  
4 The LASD officers found and Respondent admitted, that she passed eight (8) checks which she  
5 stole from her sister-in-law in the total amount of \$302.08 to purchase numerous items of  
6 merchandise from Sav-On Drug Store and Albertsons grocery store.

7 e. On or about April 4, 2002, in a criminal proceeding entitled *The People of*  
8 *the State of California v. Kathleen Schwartz* in Los Angeles Superior Court, Santa Clarita  
9 Courthouse, Case No. 2NE00673, Respondent was convicted on a plea of *nolo contendere* for  
10 violating interlineated count 2, Penal Code section 484 (petty theft), a misdemeanor.

11 f. The circumstances of the conviction are that on or about March 5, 2002,  
12 by her own admission, Respondent entered a Sav-On drug with the knowledge that she did not  
13 have a means to pay for purchases, retrieved personal items for herself, exited the store with the  
14 items, and failed to pay for the items. Respondent was confronted by theft control personnel  
15 after she left the store, and was arrested through a citizens' arrest. Thereafter, Los Angeles  
16 Sheriff's Department officers processed Respondent's arrest.

17 SECOND CAUSE FOR DISCIPLINE

18 (Obtain / Possess a Controlled Substance)

19 13. Respondent is subject to disciplinary action under Section 2878,  
20 subdivisions (a) and (d), as defined in Section 2878.5, subdivision (a), on the grounds of  
21 unprofessional conduct, in that on or about October 4, 2005, Respondent was in possession of  
22 Diazepam, a controlled substance and dangerous drug, without a valid prescription violating  
23 terms of the chapter, as more fully described above in paragraphs 12 (a) (b).


24 THIRD CAUSE FOR DISCIPLINE

25 (Drug Related Conviction)

26 14. Respondent is subject to disciplinary action under Section 2878,  
27 subdivisions (a) and (d), on the grounds of unprofessional conduct as defined in Section 2878.5,  
28 subdivision (c), in that on or about January 5, 2006, Respondent was convicted of a crime

1                    3.        Taking such other and further action as deemed necessary and proper.  
2

3        DATED: July 28, 2008  
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5  
6                      
7                    for TERESA BELLO-JONES, J.D., M.S.N., R.N.  
8                    Executive Officer  
9                    Bureau of Vocational Nursing and Psychiatric Technicians  
10                    Department of Consumer Affairs  
11                    State of California

12                    Complainant  
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